

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

O.A.NO.1356/1996

DATED OF DECISION: 30.09.2004

PRESENT: HON'BLE MR. SARWESHWAR JHA, MEMBER (A)  
HON'BLE MR. M.K. GUPTA, MEMBER (J)

Sri Subrata Kumar Gupta,  
Son of Sontosh Kumar Gupta,  
Residing at Vill. & P.O. Baladurpur,  
P.S. Kaliachak,  
Distt. Maldah

.... Applicant

Versus

1. Union of India represented by  
The General Manager, Eastern Railway,  
17, Netaji Subhas Road,  
Calcutta - 700 001
2. The Chief Personnel Officer,  
Eastern Railway, 17, Netaji Subhas Road,  
Calcutta - 700 001
3. The Divisional Railway Manager,  
Eastern Railway,  
Asansol Division
4. The Senior Divisional Personnel Officer,  
Eastern Railway,  
Asansol, Calcutta

.... Respondents

Present for Applicant : Mr. A.K. Banerjee

Present for Respondents : Mr. P.K. Arora

O R D E R

PER SARWESHWAR JHA, A.M. :

The applicant has prayed for directions being given to the respondents to issue appointment letter in his favour and to engage him as a Substitute or in any other job against the quota meant for ITI passed candidates or against the existing vacancies. He has also sought directions being given to the respondents to extend the benefit of the orders as given by this Tribunal in OA Nos. 24 of 1990 and OA No. 1031 of 1994.

*S-T*

2. The facts of the matter, briefly, are that the applicant had applied to the concerned authorities for his engagement as a Group-D Staff/Substitute in the year 1984 on the basis of his having passed and obtained the I.T.I. Certificate. Referring to a provision for engagement of I.T.I. passed candidates in the Railway service, he has claimed that he appeared before the Senior Divisional Personnel Officer, Eastern Railway, Asansol on 26.11.1984 with all his original Certificates in support of his age, academic qualification, I.T.I. Certificate and the same were duly verified by the said authority (respondent No.4) <sup>who</sup> and found his Certificates proper and genuine. He has also claimed that medical verification was also made on 12.12.1984 and he was found fit and accordingly he was given to understand that formal appointment letter as a Substitute would be issued to him soon. He met the concerned authorities in the matter and who verbally told him to wait for some more time, and <sup>he</sup> has since been waiting for ~~his turn~~.

3. The applicant has alleged that some appointments had been made by the Railways from amongst the I.T.I. passed candidates as Substitutes and that he was surprised that his case had been ~~ignored~~ and some others had been appointed, which is highly discriminatory and illegal. The names of the persons, who are reported to have been employed as Substitutes are given in paragraph 4 (VII) of the OA. He has also referred to some orders having been ~~isseed~~ on 22.11.1984 by the respondent-authorities in respect of 10 other candidates, who reported at their respective Divisions for verification of their testimonials and Certificates for the purpose of their engagement and also that medical tests, like the applicant, were ~~also~~ carried out in their cases, but no appointment

*B. T. S.*

has been given to them. One of the aforesaid persons, namely, Umapada Acharya, is reported to have approached the Tribunal vide OA No.24 of 1990 and the same was disposed of with a direction to the respondents to complete screening of the applicant and enlist him in the approved panel of Substitutes and that the said applicant shall be given engagement in accordance with his seniority in the panel of approved Substitutes if any vacancy arises. The applicant in the present OA has claimed that his case is similar to the case of Umapada Acharya and that in his case also medical examination had already been carried out and he had been declared fit and that he also has submitted a representation to the authority concerned after the Tribunal had granted him liberty to file a representation while his OA No.359 of 1992 (Annexure 'B') had been withdrawn by him.

4. A reference has also been made to the decision of the Allahabad Bench of the Tribunal in B.M. Gupta vs. Union of India & Others (ATC Vol. 21/1992 page 493) in which it was held that the benefit of the judgement should be given effect to <sup>in the case of</sup> others also. According to the applicant, somewhat similar views were expressed by the Hon'ble Apex Court in the case of Inder Pal Yadav vs. Union of India (Sect. (1985) 2 : Page 648). The applicant has also cited the decision of the Tribunal in Illa Bhattacharjee vs. Union of India & Others (O.A. 352 of 1989) in which it was held that the matter is now well settled and in order to avoid multiplicity of proceedings, the employers themselves shall apply to all employees the principles as settled finally by a judicial body. According to the applicant, there are still some vacancies in Group-D category and he can be appointed against one of them.

*S. W.*

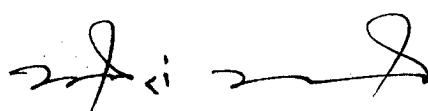
5. The respondents have confirmed that the applicant along with others submitted an application to the Chief Personnel Officer, Eastern Railway, Calcutta in the year 1984 for their engagement in the Railways being I.T.I. passed. They were directed to report to the Office of Senior Divisional Personnel Officer, Eastern Railway, Asansol with their documents in support of their prayer for engagement as unapproved Substitutes in Asansol Division. The applicant was ordered to be engaged as an unapproved Substitute under the Signal Inspector (Cons), Andal pending medical examination vide their letter dated 27.11.1984 (Annexure 'C' to the reply). However, the services of the applicant were not found satisfactory and that he was absenting himself from duty unauthorisedly and for which his name had to be deleted from the list of unapproved Substitutes w.e.f. 05.01.1985 vide their letter dated 05.01.1985 (Annexure/R).

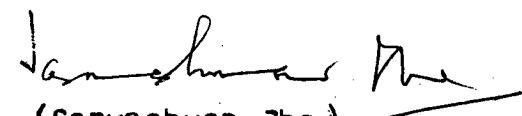
6. The respondents have also referred to the cases as filed by similarly circumstanced candidates vide OA No. 271 of 1988 - Dilip Kumar Barary vs. Union of India & Others, OA No. 272 of 1988 - Gajai Ch. Rishi vs. Union of India & Ors. and OA No. 489 of 1988 - Md. Sadque Ali vs. Union of India & Ors. and the same having been dismissed by the Calcutta Bench of the Tribunal vide Orders dated 03.05.1988, 03.05.1988 and 08.09.1988 respectively (Annexures R/1, R/2 & R/3). It is further observed that the applicant was given appointment by the respondents as an unapproved Substitute and thus, the directions as given by the Tribunal in similarly placed cases and as relied upon by the applicant have already



been taken care of in the case of the applicant, even though the said directions of the Tribunal had not been given in his case. The case of the applicant thus appears to be entirely on a different footing. The applicant seems to have been dis-engaged by the respondents purely on the ground of his unsatisfactory performance and also ~~now~~ his having absented himself unauthorisedly from 05.01.1985. To seek appointment on the basis of I.T.I. Certificate and his having appeared before the concerned authority when he had already availed of the appointment on the said ground, therefore, does not appear to be logical and in order. He, in fact, appears to have suppressed the material fact that he had been appointed by the respondents already and that his name had been deleted by them from the list of unapproved Substitutes for his unsatisfactory work and unauthorised absence. ~~Accordingly, we~~ have no reason to interfere with the order of the respondents nor to look into the request of the applicant for consideration of his prayer for engagement as an I.T.I. passed candidate.

7. Thus, finding no merit in the case, we are of the considered opinion that the DA is fit to be dismissed. Ordered accordingly. No order as to costs.

  
 (Mukesh Kumar Gupta)  
 Member (J)

  
 (Sarweshwar Jha)  
 Member (A)

/pkr/